was reported unanimously by the Judiciary Committee and his confirmation should be expedited.

Michael P. McCuskey was likewise reported without a single objection by the Judiciary Committee for a vacancy that is a judicial emergency that ought to be filled without delay.

Frederica Massiah-Jackson is a Pennsylvania State court judge. The Senate should move to consider her nomination without the months of delay that will ensue following adjournment.

As we enter the final hours of this session, the Senate has confirmed 36 of the President's 77 judicial nominations. That is certainly better than the 17 confirmed last year. It is better than the total of only 9 who had been confirmed before September this year. But in a time period in which we have experienced 121 vacancies on the Federal courts, the Senate has proceeded to confirm judges at an annual rate of only three per month. And that does not begin to consider the natural attrition that will lead to more vacancies over the next several months.

I want to thank the President of the United States for helping. Not only has the President sent us almost 80 nominees this year but he devoted a national radio address to reminding the Senate of its constitutional responsibility to consider and confirm qualified nominees to the Federal bench. When he spoke, the American people, and maybe even the Senate, listened. Since word that he would be speaking out on this issue reached Capitol Hill, the pace has picked up a bit.

Unfortunately, the final report on this session of Congress is that the Senate did not make progress on the judicial vacancy crisis. In fact, there are many more vacancies in the Federal judiciary today than when the Senate adjourned last year. At the snail's pace that the Senate has proceeded with judicial nominations this year, we are not even keeping up with attrition. When Congress adjourned last year, there were 64 vacancies on the Federal bench. In the last 11 months, another 57 vacancies have occurred. Thus, after the confirmation of 36 judges in 11 months, there has been a net increase of 16 vacancies, an increase of more than one-third in the number of current Federal judicial vacancies.

Judicial vacancies have been increasing, not decreasing, over the course of this year and therein lies the vacancy crisis, which the Chief Justice of the United States Supreme Court has called the rising number of vacancies ''the most immediate problem we face in the Federal judiciary.''

The Senate still has pending before it 11 nominees who were first nominated during the last Congress, including five who have been pending since 1995. While I am delighted that we are moving more promptly with respect to some of this year's nominees, I remain concerned about the other vacancies and other nominees.

There remains no excuse for the Senate's delay in considering the nominations of such outstanding individuals as Professor William A. Fletcher, Judge James A. Beaty, Jr., Judge Richard A. Paez, M. Margaret McKeown, Susan Oki Mollway, Margaret M. Morrow, Clarence J. Sundram, Ann L. Aiken, Annabelle Rodriguez, Michael D. Schattman and Hilda G. Tagle, all of whom have been pending since the last Congress. All of these nominees have been waiting at least 18 months and some more than 2 years for Senate action.

Most of these outstanding nominees have been waiting all year for a hearing. Professor Fletcher and Ms. Mollway had both been favorably reported last year. Judge Paez had a hearing last year but has been passed over so far this year. Judge Paez, Professor Fletcher, and Ms. McKeown are all nominees for judicial emergency vacancies on the Ninth Circuit, as well.

Next year, I hope that the Committee will proceed without delay to consider these nominations, as well as the nominations of Clarence Sundram and Judge Sonia Sotomayor, who have participated in hearings but are still bottled up in the Judiciary Committee.

We should be moving promptly to fill the vacancies plaguing the Federal courts. Thirty-five confirmations in a year in which we have witnessed 121 vacancies is not fulfilling the Senate's constitutional responsibility.

At the end of Senator HATCH's first year chairing the Committee, 1995, the Senate adjourned having confirmed 58 judicial nominations. In the last year of the Bush Presidency, a Democratic majority in the Senate proceeded to confirm 66 judges.

Unfortunately, this year there has been a concerted campaign of intimidation that threatens the very independence and integrity of our judiciary. We are witnessing an ideological and political attack on the judiciary by some, both outside and within Congress. Earlier this fall the Republican Majority Whip in the House and the Majority Leader in the Senate talked openly about seeking to ''intimidate'' the Federal judiciary. It is one thing to criticize the reasoning of an opinion, the result in a case, or to introduce legislation to change the law. It is quite another matter to undercut the separation of powers and the independence that the Founders created to insulate the judiciary from politics. Independent judicial review has been an important check on the political branches of our Federal Government that have served us so well for over 200 years.

I want to commend all those who have spoken out against this extremist and destructive rhetoric.

I also thank my Democratic colleagues for their patience this year. No Democrat has delayed or placed a ''hold'' on a single judicial nominee for a single day, all year. It is the normal course in the Senate when one Senator sees the recommendations of other Senators of the other party moving through to confirmation while his or her nominees are being held back, to place such a hold. This year we resisted.

I have urged those who have been stalling the consideration of the President's judicial nominations to reconsider and to work with us to have the Judiciary Committee and the Senate fulfil its constitutional responsibility. Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. Courts cannot try cases, incarcerate the guilty or resolve civil disputes without judges. The mounting backlogs of civil and criminal cases in the dozens of emergency districts, in particular, are growing more critical by the day.

I hope that when we return in January, there will be a realization by those in this body who have started down this destructive path of attacking the judiciary and stalling the confirmation of qualified nominees to the Federal bench that those efforts do not serve the national interest or the American people. I hope that we can once again remove these important matters from partisan and ideological politics.

PRESIDENT'S LINE ITEM VETO OF THE OPEN SEASON FOR CIVIL SERVICE RETIREMENT SYSTEM EMPLOYEES IN THE TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1998

Mr. STEVENS. Mr. President, last year the Congress enacted, and the President signed into law, the Line Item Veto Act—Public Law 104–130. This act delegated specific authority to the President to cancel in whole any dollar amount of discretionary budget authority identified by Congress, new direct spending, and limited tax benefits. As the chairman of the Governmental Affairs Committee at that time, I was chairman of the conference committee and one of the principal authors of the act. Another principal author was the Senator from New Mexico, my good friend and chairman of the Senate Budget Committee. We are here on the floor today to say that the President exceeded the authority delegated to him when he attempted to use the Line Item Veto Act to cancel section 642 of the Treasury and General Government Appropriations Act of 1998, which is Public Law 105–61.

Section 642 of that law would allow a six month open season for employees currently under the Civil Service Retirement System (CSRS) to switch to the Federal Employee Retirement System (FERS). The last such open season was in 1988.

On October 16 President Clinton sent a special message to Congress in which he claims to have canceled section 642 pursuant to the authority delegated to him by Congress in the Line Item Veto Act. Under the Act the President is permitted to cancel in whole any dollar

amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit if the President determines that such cancellation will reduce the Federal budget deficit, not impair any essential government function, and not harm the national interest. A cancellation must be made and Congress must be notified by special message within five calendar days of the date of enactment of the law providing the dollar amount of discretionary budget authority, item of new direct spending, or limited tax benefit that was canceled.

The President's special message number 97–56 on the Treasury and General Government Appropriations Act of 1998 states that the President is canceling $854 million in discretionary budget authority provided by section 642. The President arrives at this figure by estimating the dollar amount that employee contributions to the CSRS would be reduced as a result of Federal employees shifting to FERS. Unfortunately for the President, these contributions do not represent a ''dollar amount of discretionary budget authority'' as defined by the Line Item Veto Act. Therefore those funds could not be canceled pursuant to that Act.

Mr. DOMENICI. I agree with my colleague from Alaska. Congress added the Line Item Veto Act as Part C of title X of the Congressional Budget and Impoundment Control Act of 1974, which is more commonly referred to as the Budget Act. This was done deliberately, so that the cancellation authority provided by the Line Item Veto Act is part of a larger, established system of budgetary tools that Congress imposes on itself or has delegated to the President to control federal spending.

The Line Item Veto Act provides a detailed definition of what represents a ''dollar amount of discretionary budget authority.'' The definition specifically allows the President to cancel the ''entire dollar amount of budget authority required to be allocated by a specific proviso in an appropriation law for which a specific dollar figure was not included,'' which appears to be the definition which the President used to justify the cancellation of section 642. However, in doing so it appears that the President's advisors failed to realize that section 642 does not constitute ''budget authority'' as defined in section 3 of the Budget Act. That definition also applies to Part C of title X of the Budget Act, which as I mentioned is the Line Item Veto Act.

''Budget authority'' is defined in the Budget Act as ''provisions of law that make funds available for obligation and expenditure * * * borrowing authority * * * contract authority * * * and offsetting receipts and collections * * *.'' Section 642 does not make any funds specifically available, so it does not meet that definition of budget authority. Nor does it provide authority to borrow money or the authority to obligate funds for future expenditure. This means that in order to qualify as budget authority, the $854 million reduction in CSRS employee contributions the President purported to cancel using the Line Item Veto Act would have to be offsetting receipts.

Unfortunately for the President, his advisors seem to have overlooked that employee contributions to retirement accounts are considered governmental receipts, and not offsetting receipts, so they do not meet the definition of budget authority.

Mr. STEVENS. The senator from New Mexico is making my point exactly. The President's advisors cannot change the definition of budget authority to permit him to reach this provision. As a senior member of the Appropriations Committee I was particularly concerned with the precise nature of the authority delegated to the President, and worked very hard along with my staff to ensure that the definitions were clear and unambiguous. That is the reason for the detailed definition in section 1026 of the Budget Act, as added by the Line Item Veto Act, which incorporates the long established definition of budget authority in section 3 of the Budget Act. Is it the Senator from New Mexico's understanding that prior to the attempted cancellation of section 642 that the President's own documents classified employee contributions to retirement accounts as governmental receipts that are counted as revenue and not offsetting receipts that offset budget authority and outlays?

Mr. DOMENICI. The Senator from Alaska is correct. In the President's Budget for Fiscal Year 1998 there is a proposal to increase employee contributions to both CSRS and FERS. This proposal is shown on page 317 of the Budget, in Table S–7 that shows the impact of tax relief provisions and other revenue measures, as an increase in governmental receipts. This same proposal is listed under ''miscellaneous receipts'' in Table 3–4 showing Federal receipts by source on page 59 of the Analytical Perspectives document that accompanied the FY 98 Budget. The fact that section 642 would have resulted in a reduction in employee contributions to CSRS does not alter their treatment under the Budget Act; they are still governmental receipts collected from employees through the government's sovereign powers and not offsetting receipts collected as a result of a business-like or market oriented activity.

Mr. STEVENS. I thank the Senator from New Mexico for that explanation. In closing, I would like to take this opportunity to clarify further how the Line Item Veto Act operates. Section 1021(a)(3)(B) of the Budget Act—the section of the Line Item Veto Act that provides the cancellation authority—makes it clear that the authority is limited to the cancellation of a dollar amount of discretionary budget authority that is provided in the just-signed law before the President. Under the specific terms and definitions provided in the Line Item Veto Act, the President cannot reach a dollar amount of discretionary budget authority provided in some other law that is not the one before the President. The Treasury and General Government Appropriations Act did not provide $854 million in discretionary budget authority for section 642, so that amount could not be rescinded under the terms of the Line Item Veto Act. The $854 million figure came from the President's estimates of the loss of employee contributions to CSRS government-wide. As we have explained above that loss is not budget authority, so it cannot be canceled. But even if it were, the President could not reach dollar amounts of discretionary budget authority government-wide unless the dollar amount of budget authority needed government-wide was provided in the specific appropriations law before him.

As the definition of cancel in section 1026 of the Budget Act clearly states, in the case of a dollar amount of discretionary budget authority the term ''cancel'' means ''rescind''—a term which itself has a long history in congressional-executive branch relations. The recission of budget authority in a specific law does not change the operative effect of a general provision in that specific law with respect to budget authority provided in another law. As the statement of managers accompanying the Line Item Veto Act makes clear, the delegated authority in the Act does not permit the President to strike out or rewrite the law. It merely allows him discretionary authority to close the doors to the Federal Treasury and refuse to spend funds appropriated by Congress in that particular law.

In contrast, the definition of ''cancel'' with respect to new direct spending, which also results in the expenditure of budget authority, is to prevent the specific provision of law or legal obligation from ''having legal force or effect.'' This distinction recognizes that provisions of law that result in new direct spending may not actually provide budget authority that can be canceled at that time—say for example a provision of law that simply increases the amount an individual will receive at a future date under an existing benefit program provided in a law enacted years before. Such provisions create a legal obligation or right that may be exercised in the future, or which result in a future increase in expenditures from budget authority provided elsewhere. If the President wishes to remove the legal force or effect of a specific provision of law that applies to budget authority provided in a law other than the appropriations law the provision is in, then he may only do so if that provision is new direct spending under the Line Item Veto Act.

Section 642 is not an ''item of new direct spending'' as defined in section 1026 of the Budget Act because it results in savings to the government

when compared to the present budget baseline. As explained above, the President's wish to the contrary notwithstanding, it does not result in a dollar amount of discretionary budget authority. Thus, the President has exceeded his delegated authority by violating the terms of the statute, and I would urge the Justice Department to concede that the cancellation of section 642 was outside the authority provided by the statute.

Mr. DOMENICI. I concur in the Senator's analysis and recommendation. The Line Item Veto Act is a carefully crafted delegation of authority. The President undermines that delegation when he attempts to reach outside the clear limits of that Act.

Mr. STEVENS. I thank the Senator from New Mexico for joining me in this colloquy, and I yield the floor.

STATUS OF OCEAN SHIPPING REFORM AND OECD SHIPBUILDING AGREEMENT LEGISLATION

Mr. LOTT. Mr. President, I rise today to address the status of the Ocean Shipping bill and the implementation of the OECD Shipbuilding Agreement in the Senate. These are very important bills which are badly needed to reform America's maritime industry.

A number of my Senate colleagues joined me in working very hard this year, in a bipartisan way, to get these two bills done. The legislation and amendments reflected a balance among the concerns of all affected parties. However, I must report that a few Senators have held up each bill. This minority of Senators wants more than most of us believe is do-able. Given the waning hours of this session, the Senate will not be able to consider and pass either of these bills this year. I am deeply disappointed.

Mr. President, maritime issues are very important to me. I grew up in the port town of Pascagoula. I still live there. My father worked in the shipyard. I have spent my entire adult life working on maritime issues. So I am very concerned by the Senate's inaction on these two pieces of legislation.

The Ocean Shipping Act is D.I.W.—''dead in the water'', at least for this year. The incremental Shipping Act reforms have been stopped because some want to inject new issues into the legislation. Issues that should be resolved at the labor-management negotiating table. Issues not directly related to making America's container ships more competitive in the international marketplace.

Mr. President, the bill's sponsors have made it clear on several occasions that we are not trying to undo or inject the Senate into the collective-bargaining process for port labor agreements. These concerns can and should be addressed in a fair and even-handed manner at the bargaining table.

Despite my efforts to work through this issue this past weekend, some Senators on the other side of the aisle have chosen to stop the Ocean Shipping Reform bill.

Mr. President, the Ocean Shipping Reform bill is necessary.

Mr. President, the Ocean Shipping Reform bill helps U.S. exporters in every State of this nation compete with their foreign competitors.

Without Ocean Shipping Reform, the Senate keeps 50 states D.I.W. for a small organized group.

Mr. President, the Ocean Shipping Reform bill helps America's container ships and exporters.

When we take up this bill early next year, each Senator will be asked to choose between helping the thousands of workers in his or her State or harming them.

Mr. President, the second piece of important maritime legislation I would like to see passed is the implementation of the OECD Shipbuilding Agreement, signed nearly 3 years ago. This legislation, I am disappointed to report, is also D.I.W.

Senators on two committees worked very hard this session, in a bipartisan manner, to address the legitimate concerns of our nation's largest shipyards. U.S. participation in this agreement is essential, but it must be based on the firm understanding that the Jones Act and national security requirements regarding vessel construction will not be restricted by other countries. What America desires is a level playing field, without compromising our national security interests.

I believe that S. 1216, with the Lott-Breaux amendment, addresses these principles in a good faith effort to resolve the issues identified by Representative BATEMAN. I would not support any legislation that didn't respect these principles.

Let me be clear. I am a Jones Act supporter, period. And I believe the amendment protects the integrity of the Jones Act.

But once again, a few Senators have stopped this vital legislation in mid-ocean. Another D.I.W. bill.

This minority of Senators wants to include additional exceptions to the OECD Agreement's limitations on commercial vessel construction subsidies and credits. I am concerned that this attempt will scuttle the entire Agreement. This is counter-productive. This would force U.S. shipbuilders back into a subsidy race that the U.S. cannot afford to win. This small minority of Senators are not just stopping this legislation in mid-ocean, but scuttling it—sinking it. And I believe that, no matter how well-meaning they may be, they will eventually jeopardize the very U.S. commercial shipbuilding industry they are trying to protect. Our commercial shipbuilding industry needs a worldwide, level playing field. We need it now.

Mr. President, it is time for these few Senators to set aside narrow regional and partisan interests and take up an oar and start rowing with the rest of the Senate. The Senate needs to get the Ocean Shipping and OECD bills moving. I intend to put these bills to a Senate vote early next year.

In the meantime, the Senate has left two vital pieces of maritime legislation stranded in the middle of the ocean, for a long winter. D.I.W. Dead in the water. This is not good for America's maritime world. This is not good for America.

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 7, 1997, the Secretary of the Senate, on November 13, 1997, during the adjournment of the Senate, received a message from the House of Representatives announcing that House had passed the following bills, each without amendment:

S. 1378. An act to extend the authorization of use of official mail in the location and recovery of missing children, and for other purposes.

S. 1507. An act to amend the National Defense Authorization Act for Fiscal Year 1998 to make certain technical corrections.

S. 1519. An act to provide a 6-month extension of highway, highway safety, and transit programs pending enactment of a law reauthorizing the Intermodal Surface Transportation Efficiency Act of 1991.

The message also announced that the House has agreed to the following concurrent resolutions, each without amendment.

S. Con. Res. 61. Concurrent resolution authorizing printing of a revised edition of the publication entitled ''Our Flag.''

S. Con. Res. 62. Concurrent resolution authorizing of the brochure entitled ''How Our Laws Are Made.''

S. Con. Res. 63. Concurrent resolution authorizing printing of the pamphlet entitled ''The Constitution of the United States of America.''

The message further announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. An act to make technical corrections to title 11, United States Code, and for other purposes.

H.R. 2440. An act to make technical amendments to section 10 of title 9, United States Code.

H.R. 2709. An act to impose certain sanctions on foreign persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles, and to implement the obligations of the United States under the Chemical Weapons Convention.

H.R. 2979. An act to authorize acquisition of certain real property for the Library of Congress, and for other purposes.

H.J. Res. 95. Joint resolution granting the consent of Congress to the Chickasaw Trail Economic Development Compact.

H.J. Res. 96. Joint resolution granting the consent and approval of Congress for the States of Maryland, the Commonwealth of Virginia, and the District of Columbia to amend the Washington Metropolitan Transit Regulation Compact.

The message also announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate.

S. 1079. An act to permit the mineral leasing of Indian land located within the Fort